

- (2) Whether the decision is erroneous in assessing payment of all outstanding medical bills for claimant's herniated lumbar disc by respondent and its insurance carrier as well as future medical expenses.
- (3) Whether the decision is erroneous in awarding claimant temporary total disability compensation.
- (4) The nature and extent of claimant's injuries.
- (5) The liability of the Kansas Workers Compensation Fund.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the decision of the Administrative Law Judge should be affirmed. The Appeals Board adopts as its own the findings of fact and conclusions of law stated in the Award with the one exception stated below and with the addition of certain clarifications or response to argument made on appeal.

The first issue raised on appeal is whether the claimant suffered accidental injury to her lumbar spine arising out of and in the course of her employment. The Appeals Board agrees with the findings and conclusions by the Administrative Law Judge on this issue with one modification. The Administrative Law Judge has indicated that Dr. C. Reiff Brown offered no opinion regarding whether claimant's herniated lumbar disc resulted from her fall at work on August 20, 1993. On this point, the Appeals Board agrees with arguments by the claimant that Dr. Brown did conclude and testify that, in his opinion, the fall aggravated a preexisting condition in claimant's lumbar spine.

Claimant argues that the Appeals Board should also find compensable claimant's cervical injuries. However, the Appeals Board agrees that the record does not establish by a preponderance of the credible evidence the claimant's cervical condition resulted from her fall at work on August 20, 1993. Claimant had been treated by her physician, Dr. James J. Shafer, in June of 1993 for right shoulder and back pain. However, the records indicate that the back pain included tenderness along the cervical and mid-thoracic spine. Also, none of the treating or examining physicians could give an opinion to a reasonable degree of medical certainty that the cervical injury was a result of claimant's fall at work. Claimant makes a compelling argument that the cervical injury was most likely traumatic in origin. However, the Appeals Board agrees with the conclusion of the Administrative Law Judge that the record as a whole does not establish by a preponderance of the credible evidence claimant's cervical injury resulted from her fall at work.

The Appeals Board also agrees with the conclusion by the Administrative Law Judge that claimant suffered a 63 percent permanent partial general work disability. James Molski lists the tasks involved in claimant's work over the 15 years prior to the injury involved in this case. He concludes that she could no longer perform 36 percent of these tasks. This opinion applies the restrictions of Dr. Ali B. Manguoglu and the Appeals Board notes that the opinion applies restrictions which Dr. Manguoglu identifies as relating either to the low back or to both the low back and cervical spine injuries. Dr. Manguoglu confirms and agrees with the opinion by Mr. Molski that claimant has a 36 percent task loss. This is the only opinion in the record on the issue.

Respondent argues the opinion of Dr. Manguoglu should not be considered because the functional capacity evaluation was not valid. The work restrictions were, however, recommended with full knowledge of the deficiency in the functional capacity evaluation.

The restrictions by Dr. Manguoglu were properly relied upon in rendering the opinions which acted as the basis of the award.

The Appeals Board also agrees with the conclusion that the claimant has a 100 percent wage loss based upon evidence that she is not working and in the absence of evidence that she has refused an offer of employment or deliberately removed herself from the labor market. The Appeals Board agrees with and affirms the finding that the claimant has a 63 percent work disability. See K.S.A. 44-510e.

The Appeals Board also agrees with the conclusion that the Workers Compensation Fund does not have liability for the benefits awarded in this case. The Appeals Board adopts and approves the findings of the Administrative Law Judge on this issue and, in addition, expressly finds that claimant's accident and injury resulted from a slip on glass, not as a result of fainting from medication she was taking for other unrelated conditions.

Other issues relating to medical benefits and temporary total disability benefits were not separately addressed as they are determined by the decision relating to compensability of the claim.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore should be, and the same is hereby, affirmed.

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Jeanie Brummer, and against the respondent, North American Philips Lighting, and its insurance carrier, for an accidental injury which occurred August 20, 1993 and based upon an average weekly wage of \$523.05, for 48.57 weeks of temporary total disability compensation at the rate of \$313.00 per week or \$15,202.41, followed by 240.30 weeks at the rate of \$313.00 per week or \$75,213.90 for a 63% permanent partial general body impairment of function, making a total award of \$90,416.31.

As of June 30, 1996, there is due and owing claimant 48.57 weeks of temporary total disability compensation at the rate of \$313.00 per week or \$15,202.41, followed by 100.72 weeks of permanent partial disability compensation at the rate of \$313.00 per week in the sum of \$31,525.36, for a total of \$46,727.77 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$43,688.54 is to be paid for 139.58 weeks at the rate of \$313.00 per week, until fully paid or further order of the Director.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jan L. Fisher, Topeka, KS
John W. Mize, Salina, KS
Norman R. Kelly, Salina, KS
Bruce E Moore, Administrative Law Judge
Philip S. Harness, Director